

1 LAWYERS FOR CLEAN WATER, INC.

2 Caroline Koch (Bar No. 266068)

3 Email: caroline@lawyersforcleanwater.com

4 1004-A O'Reilly Avenue

5 San Francisco, California 94129

6 Telephone: (415) 440-6520

7 Facsimile: (415) 440-4155

8 ORANGE COUNTY COASTKEEPER

9 Colin Kelly (Bar No. 266956)

10 Email: colin@coastkeeper.org

11 3151 Airway Avenue, Suite F-110

12 Costa Mesa, California 92626

13 Telephone: (714) 850-1965

14 *Attorneys for Plaintiff*

15 ORANGE COUNTY COASTKEEPER

16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ORANGE COUNTY COASTKEEPER, a
California non-profit corporation;

Plaintiff,

v.

ROBERTSON'S READY MIX, LTD., a
California Limited Partnership,

Defendant.

Civil Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

1 Orange County Coastkeeper (“Coastkeeper” or “Plaintiff”), by and through its
2 counsel, hereby alleges:

3 **I. JURISDICTION, VENUE, AND RELATED CASES**

4 1. This is a civil suit brought under the citizen suit enforcement provision of
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and
9 laws of the United States).

10 2. On June 3, 2016, Coastkeeper issued a 60-day Notice of Violation and Intent
11 to File Suit Under the Clean Water Act letter (“Notice Letter”) to Robertson’s Ready
12 Mix, Ltd. (“Defendant”). The Notice Letter informed Defendant of its violations of
13 California’s General Permit for Discharges of Storm Water Associated with Industrial
14 Activities (*National Pollutant Discharge Elimination System (“NPDES”) General Permit*
15 *No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-*
16 *DWQ, as amended by Order No. 2014-0057-DWQ*) (hereinafter “Storm Water Permit”)
17 and the Clean Water Act at its facility located at 116 Rincon Ct., San Clemente, CA
18 92672 (“Facility”). The Notice Letter informed Defendant of Coastkeeper’s intent to file
19 suit against Defendant to enforce the Storm Water Permit and the Clean Water Act.

20 3. The Notice Letter was also sent to the registered agent for Defendant, the
21 Administrator of the United States Environmental Protection Agency (“EPA”), the
22 Administrator of EPA Region IX, the Executive Director of the State Water Resources
23 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality
24 Control Board, Santa Ana Region (“Regional Board”), as required by 40 C.F.R.
25 § 135.2(a)(1) and Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice
26 Letter is attached hereto as **Exhibit A** and is incorporated herein by reference.

27 4. More than sixty (60) days have passed since the Notice Letter was served on
28

1 Defendant and the State and Federal agencies. Coastkeeper is informed and believes, and
2 thereon alleges, that neither the EPA nor the State of California has commenced or is
3 diligently prosecuting an action to redress the violations alleged in the Notice Letter and
4 in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior
5 administrative penalty under Section 309(g) of the CWA. 33 U.S.C. § 1319(g).

6 5. Venue is proper in the Central District of California pursuant to Section
7 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are
8 located within this judicial district.

9 6. Plaintiff seeks relief for Defendant's substantive and procedural violations of
10 the Storm Water Permit and the Clean Water Act resulting from Defendant's operations
11 at its Facility.

12 7. On April 25, 2016, Inland Empire Waterkeeper and Orange County
13 Coastkeeper, (collectively, "Waterkeeper") filed a Complaint for Declaratory and
14 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
15 No. 5:16-cv-00825-DMG-JCx, *Inland Empire Waterkeeper et al. v. Robertson's Ready*
16 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit
17 and the Clean Water Act resulting from Defendant's operations at an industrial facility
18 located at 6120 20th Street, Riverside, California 92509. The parties and claims at issue
19 in Waterkeeper's pending complaint dated April 25 are related to the parties and claims at
20 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has
21 been submitted concurrently herewith.

22 8. On May 25, 2016, Waterkeeper filed a Complaint for Declaratory and
23 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
24 No. 5:16-cv-01085-DMG-JC, *Inland Empire Waterkeeper et al. v. Robertson's Ready*
25 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit
26 and the Clean Water Act resulting from Defendant's operations at an industrial facility
27 located at 2601 N. Alder Avenue, Rialto, California 92376. The parties and claims at
28

1 issue in Waterkeeper's pending complaint dated May 25 are related to the parties and
2 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule
3 83-1.3.1 has been submitted concurrently herewith.

4 9. On May 25, 2016, Orange County Coastkeeper ("Coastkeeper") filed a
5 Complaint for Declaratory and Injunctive Relief and Civil Penalties in the Central
6 District of California Civil Case No. SA CV 16-961-DMG-JCx, *Orange County*
7 *Coastkeeper v. Robertson's Ready Mix, Ltd.*, which alleges substantive and procedural
8 violations of the Storm Water Permit and the Clean Water Act resulting from
9 Defendant's operations at an industrial facility located at 310 N. Townsend Street, Santa
10 Ana, California, 92703. The parties and claims at issue in Coastkeeper's pending
11 complaint dated May 25 are related to the parties and claims at issue described herein. A
12 notice of related cases pursuant to Civil Local Rule 83-1.3.1 has been submitted
13 concurrently herewith.

14 10. On August 3, 2016, Coastkeeper filed a Complaint for Declaratory and
15 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
16 No. _____, *Orange County Coastkeeper v. Robertson's Ready Mix, Ltd.*, which
17 alleges substantive and procedural violations of the Storm Water Permit and the Clean
18 Water Act resulting from Defendant's operations at an industrial facility located at 16081
19 Construction Circle W., Irvine, California 92606. The parties and claims at issue in
20 Coastkeeper's pending complaint dated August 3 are related to the parties and claims at
21 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has
22 been submitted concurrently herewith.

23 11. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and
24 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
25 No. _____, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,
26 which alleges substantive and procedural violations of the Storm Water Permit and the
27 Clean Water Act resulting from Defendant's operations at an industrial facility located at
28

1 14250 Old 215 Frontage Road, Moreno Valley, California 92552. The parties and claims
2 at issue in Waterkeeper's pending complaint dated August 3 are related to the parties and
3 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule
4 83-1.3.1 has been submitted concurrently herewith.

5 12. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and
6 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
7 No. _____, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,
8 which alleges substantive and procedural violations of the Storm Water Permit and the
9 Clean Water Act resulting from Defendant's operations at an industrial facility located at
10 452 W. Luis Estrada, Beaumont, California 92223. The parties and claims at issue in
11 Coastkeeper's pending complaint dated August 3 are related to the parties and claims at
12 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has
13 been submitted concurrently herewith.

14 13. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and
15 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
16 No. _____, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,
17 which alleges substantive and procedural violations of the Storm Water Permit and the
18 Clean Water Act resulting from Defendant's operations at an industrial facility located at
19 1675 S. State St., San Jacinto, California 92383. The parties and claims at issue in
20 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at
21 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has
22 been submitted concurrently herewith.

23 14. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and
24 Injunctive Relief and Civil Penalties in the Central District of California Civil Case
25 No. _____, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,
26 which alleges substantive and procedural violations of the Storm Water Permit and the
27 Clean Water Act resulting from Defendant's operations at an industrial facility located at
28

1 27050 Watson Road, Sun City, California 92585. The parties and claims at issue in
2 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at
3 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has
4 been submitted concurrently herewith.

5 **II. PARTIES**

6 **A. Orange County Coastkeeper.**

7 15. Orange County Coastkeeper is a non-profit public benefit corporation
8 organized under the laws of the State of California. Orange County Coastkeeper's office
9 is located at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626.

10 16. Coastkeeper has over 2,000 members who live and/or recreate in and around
11 the San Juan Hydrological Unit. Coastkeeper is dedicated to the preservation, protection,
12 and defense of the environment, wildlife, and natural resources of local surface waters.
13 To further these goals, Coastkeeper actively seeks federal and state agency
14 implementation of the Clean Water Act and, where necessary, directly initiates
15 enforcement actions on behalf of itself, its members, and others.

16 17. Coastkeeper's members use and enjoy the waters that Robertson's
17 discharges into, including the Segunda Deshecha Creek (also known as "Segunda
18 Deshecha Canada Channel"), which flows to the Pacific Ocean at North Beach, for
19 fishing, boating, swimming, bird watching, picnicking, viewing wildlife, sailing,
20 kayaking, hiking, engaging in scientific study, including monitoring and research
21 activities, and/or for aesthetic enjoyment.

22 18. Defendant's failure to comply with the procedural and substantive
23 requirements of the Storm Water Permit and/or the Clean Water Act, including but not
24 limited to Defendant's discharges of polluted storm water and non-storm water from the
25 Facility degrade water quality and harm aquatic life in the San Juan Hydrological Unit,
26 and impair Coastkeeper's members' use and enjoyment of its waters.

27 19. The violations of the Storm Water Permit and Clean Water Act at the Facility
28

1 are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are
2 being, and will continue to be adversely affected by Defendant's failure to comply with the
3 Storm Water Permit and the Clean Water Act. The relief sought herein will redress the
4 harms to Coastkeeper caused by Defendant's activities.

5 20. Continuing commission of the acts and omissions alleged herein will
6 irreparably harm Coastkeeper's members, for which harm they have no plain, speedy, or
7 adequate remedy at law.

8 **B. The Owner and/or Operator of the Robertson's Facility.**

9 21. Coastkeeper is informed and believes, and thereon alleges, that Robertson's
10 Ready Mix, Ltd. is an owner of the Facility.

11 22. Coastkeeper is informed and believes, and thereon alleges, that Robertson's
12 Ready Mix, Ltd. has owned the Facility since at least November 20, 1997.

13 23. Coastkeeper is informed and believes, and thereon alleges, that Robertson's
14 Ready Mix, Ltd. is an operator of the Facility.

15 24. Coastkeeper is informed and believes, and thereon alleges, that Robertson's
16 Ready Mix, Ltd. has operated the Facility since at least November 20, 1997.

17 25. Coastkeeper refers to Robertson's Ready Mix, Ltd. herein as the "Facility
18 Owner and/or Operator."

19 26. Coastkeeper is informed and believes, and thereon alleges, that Robertson's
20 Ready Mix, Ltd. is an active limited partnership registered in California.

21 27. Coastkeeper is informed and believes, and thereon alleges, that the name and
22 address of the Registered Agent for Robertson's Ready Mix, Ltd. is Mervyn Encarnacion,
23 200 S. Main Street, Suite 200, Corona, California 92882.

24 **III. LEGAL BACKGROUND**

25 **A. The Clean Water Act.**

26 28. The Clean Water Act requires point source discharges of pollutants to
27 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R.
28

1 § 122.26(c)(1).

2 29. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
3 discharge of any pollutant into waters of the United States unless the discharge complies
4 with various enumerated Sections of the CWA. Among other things, Section 301(a)
5 prohibits discharges not authorized by, or in violation of, the terms of a NPDES permit
6 issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

7 30. “Waters of the United States” are defined as “navigable waters,” and “all
8 waters which are currently used, were used in the past, or may be susceptible to use in
9 interstate or foreign commerce, including waters which are subject to the ebb and flow of
10 the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

11 31. The “discharge of a pollutant” means, among other things, “any addition of
12 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40
13 C.F.R. § 122.2.

14 32. The EPA promulgated regulations defining “waters of the United States.”
15 *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not only
16 traditionally navigable waters, but also other waters, including waters tributary to
17 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
18 could affect interstate commerce.

19 33. The Clean Water Act confers jurisdiction over waters that are tributaries to
20 traditionally navigable waters where the water at issue has a significant nexus to the
21 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*
22 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

23 34. A significant nexus is established if the “[receiving waters], either alone or
24 in combination with similarly situated lands in the region, significantly affect the
25 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.
26 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

27 35. A significant nexus is also established if waters that are tributary to
28

1 navigable waters have flood control properties, including functions such as the reduction
2 of flow, pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal.*
3 *River Watch*, 496 F.3d at 1000-1001.

4 36. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for
5 citizen enforcement actions against any “person” who is alleged to be in violation of an
6 “effluent standard or limitation . . . or an order issued by the Administrator or a State with
7 respect to such a standard or limitation.” See 33 U.S.C. §§ 1365(a)(i) and 1365(f).

8 37. Robertson’s Ready Mix, Ltd. is a “person” within the meaning of Section
9 502(5) of the Clean Water Act. See 33 U.S.C. § 1362(5).

10 38. An action for injunctive relief is authorized under Section 505(a) of the
11 Clean Water Act. See 33 U.S.C. § 1365(a).

12 39. Each separate violation of the Clean Water Act subjects the violator to a
13 penalty of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the CWA. See
14 33 U.S.C. §§ 1319(d) and 1365(a); Adjustment of Civil Monetary Penalties for Inflation,
15 40 C.F.R. § 19.4.

16 40. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits
17 prevailing or substantially prevailing parties to recover litigation costs, including
18 attorneys’ fees, experts’ fees, and consultants’ fees.

19 **B. California’s Storm Water Permit.**

20 41. Section 402(p) of the Clean Water Act establishes a framework for
21 regulating industrial storm water discharges under the NPDES permit program. 33 U.S.C.
22 § 1342(p).

23 42. Section 402(b) of the Clean Water Act allows each state to administer its
24 own EPA-approved NPDES permit program for regulating the discharge of pollutants,
25 including discharges of polluted storm water. See 33 U.S.C. § 1342(b). States with
26 approved NPDES permit programs are authorized by section 402(b) to regulate industrial
27 storm water discharges through individual NPDES permits issued to dischargers and/or
28

1 through the issuance of a statewide general NPDES permit applicable to all industrial
2 storm water dischargers. *See id.*

3 43. California is a state authorized by EPA to issue NPDES permits.

4 44. In California, the State Board is charged with regulating pollutants to protect
5 California's water resources. *See Cal. Water Code § 13001.*

6 45. The Storm Water Permit is a statewide general NPDES permit issued by the
7 State Board pursuant to the Clean Water Act.

8 46. Between 1997 and June 30, 2015, the Storm Water Permit in effect was
9 Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit."

10 47. On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water
11 Permit was reissued, which Coastkeeper refers to as the "2015 Permit."

12 48. The 2015 Permit superseded the 1997 Permit, except for enforcement
13 purposes, and its terms are as stringent, or more stringent, than the terms of the 1997
14 Permit. *See 2015 Permit, Findings, ¶ 6.*

15 49. In order to discharge storm water lawfully in California, industrial
16 dischargers must secure coverage under the Storm Water Permit and comply with its
17 terms, or obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2;
18 2015 Permit Findings, ¶ 12. Prior to beginning industrial operations, dischargers are
19 required to apply for coverage under the Storm Water Permit by submitting a Notice of
20 Intent to Comply with the Terms of the General Permit to Discharge Storm Water
21 Associated with Industrial Activity ("NOI") to the State Board. *See 1997 Permit, Finding*
22 *#3; see also 2015 Permit, Findings, ¶ 17.*

23 50. Violations of the Storm Water Permit are violations of the Clean Water Act.
24 *See 1997 Permit, Section C(1) (Standard Provisions); see also 2015 Permit, Section*
25 *XXI(A) (Duty to Comply).*

26 ///

27 ///

1 **C. The Storm Water Permit Discharge Prohibitions, Effluent Limitations,**
2 **and Receiving Water Limitations.**

3 51. The Storm Water Permit contains certain absolute prohibitions. The Storm
4 Water Permit prohibits the direct or indirect discharge of materials other than storm water
5 (“non-storm water discharges”), which are not otherwise authorized by an NPDES
6 permit, to the waters of the United States. *See* 1997 Permit, Discharge Prohibition A(1);
7 *see also* 2015 Permit, Discharge Prohibition III(B).

8 52. The Storm Water Permit Effluent Limitations require dischargers covered by
9 the Storm Water Permit to **reduce** or prevent pollutants in storm water discharges through
10 the implementation of Best Available Technology Economically Achievable (“BAT”) for
11 toxic or non-conventional pollutants, and Best Conventional Pollutant Control
12 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R.
13 § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are
14 listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand (“BOD”), total
15 suspended solids (“TSS”), oil and grease (“O&G”), and pH. *See* 1997 Permit, Effluent
16 Limitation B(3); *see also* 2015 Permit, Section V(A).

17 53. Pursuant to the CWA and the Storm Water Permit, dischargers must employ
18 Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or
19 eliminate storm water pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation
20 B(3); 2015 Permit, Effluent Limitation V(A).

21 54. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial
22 Activities (“MSGP”) includes numeric benchmarks for pollutant concentrations in storm
23 water discharges (“EPA Benchmarks”).

24 55. The EPA Benchmarks provide an objective standard to determine whether a
25 facility’s BMPs are successfully developed and/or implemented. *See* MSGP, 80 Fed.
26 Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29,
27 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

1 56. The EPA Benchmarks for the following parameters, among others, are as
2 follows: pH – 6.0 – 9.0 standard units (“s.u.”); TSS – 100 mg/L; total organic carbon
3 (“TOC”) – 110 mg/L; iron – 1.0 mg/L; nitrate plus nitrate as nitrogen (“N+N”) – 0.68
4 mg/L; oil and grease – 15 mg/L; aluminum – 0.75 mg/L; and zinc – 0.13 mg/L.

5 57. Discharges from an industrial facility containing pollutant concentrations
6 that exceed EPA Benchmarks indicate that the facility has not developed and/or
7 implemented BMPs that meet BAT for toxic pollutants and/or BCT for conventional
8 pollutants. *Id.*

9 58. The Storm Water Permit Receiving Water Limitations prohibit storm water
10 discharges from adversely impacting human health or the environment. *See* 1997 Permit,
11 Receiving Water Limitation C(1); *see also* 2015 Permit, Section VI(B).

12 59. Storm water discharges with pollutant levels that exceed levels known to
13 adversely impact aquatic species and the environment are violations of Receiving Water
14 Limitation C(1) of the 1997 Permit and Section VI(B) of the 2015 Permit.

15 60. The Storm Water Permit Receiving Water Limitations also prohibit storm
16 water discharges that cause or contribute to an exceedance of any “applicable Water
17 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional
18 Board’s Basin Plan.” *See* 1997 Permit, Receiving Water Limitation C(2); *see also* 2015
19 Permit, Receiving Water Limitation VI(A).

20 61. Water Quality Standards (“WQS”) are pollutant concentration levels
21 determined by the State Board, the various regional boards, and the EPA to be protective
22 of the beneficial uses of the waters that receive polluted discharges.

23 62. The State of California regulates water quality through the State Board and
24 the nine Regional Boards. Each Regional Board maintains a separate Water Quality
25 Control Plan which contains WQS for water bodies within its geographical area.

26 63. The Water Quality Control Plan for the San Diego Basin (“Basin Plan”)
27 identifies the “Beneficial Uses” of water bodies in the region. The Facility discharges into
28

1 the Segunda Deshecha Creek and immediately into the Pacific Ocean at North Beach
2 (“Receiving Waters”). The existing and/or potential Beneficial Uses for the Segunda
3 Deshecha Creek include Agricultural Supply, Non-Contact Water Recreation, Warm
4 Freshwater Habitat, Wildlife Habitat, and Contact Water Recreation. *See* Basin Plan at
5 Table 2-2.

6 64. Surface waters that cannot support the Beneficial Uses of those waters listed
7 in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of
8 the Clean Water Act. According to the 2012 303(d) List of Impaired Water Bodies,
9 Segunda Deshecha Creek is impaired for phosphorus, toxicity, and turbidity.¹

10 65. Discharges of pollutants at levels above WQS contribute to the impairment
11 of the Beneficial Uses of the waters receiving the discharges.

12 66. WQS applicable to dischargers covered by the Storm Water Permit include,
13 but are not limited to, those set out in the Basin Plan and in the Criteria for Priority Toxic
14 Pollutants for the State of California (“CTR”), 40 C.F.R. § 131.38.

15 67. The Basin Plan sets forth, among other things, a narrative water quality
16 objective for iron: “Inland surface waters shall not contain iron in concentrations in
17 excess of the numerical objective described in Table 3-2.” *See* Basin Plan, 3-25. Table 3-
18 2 states that the numeric objective is 0.3 mg/L. This concentration is not to be exceeded
19 more than 10% of the time during any one (1) year period.

20 68. The CTR includes numeric criteria set to protect human health and the
21 environment in the State of California. Water Quality Standards; Establishment of
22 Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-
23 823-00-008 (April 2000), available at: <http://bit.ly/2aGpEGo>.

24 69. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan
25 standards, and/or other applicable WQS are violations of Receiving Water Limitation
26 C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

27 ¹ 2012 Integrated Report – All Assessed Waters, *available at*
28 http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on May 9, 2016).

D. The Storm Water Permit Storm Water Pollution Prevention Plan Requirements.

70. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit, Section A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water and authorized non-storm water discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

71. The SWPPP must include: a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of storm water management practices; a description of the BMPs to be implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and a description of individuals and their current responsibilities for developing and implementing the SWPPP. 1997 Permit, Section A(1)-(10); 2015 Permit, Section X.

72. The objectives of the SWPPP are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water

1 discharges, to identify and implement site-specific BMPs to prevent the exposure of
2 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water
3 from industrial facilities. 1997 Permit, Section A(2); 2015 Permit, Section X.

4 73. The Storm Water Permit requires the discharger to evaluate the SWPPP on
5 an annual basis and revise it as necessary to ensure compliance with the Storm Water
6 Permit. 1997 Permit, Section A(9); 2015 Permit, Section X(A)(9). The Storm Water
7 Permit also requires that the discharger conduct an annual comprehensive site compliance
8 evaluation that includes a review of all visual observation records, inspection reports and
9 sampling and analysis results, a visual inspection of all potential pollutant sources for
10 evidence of, or the potential for, pollutants entering the drainage system, a review and
11 evaluation of all BMPs to determine whether the BMPs are adequate, properly
12 implemented and maintained, or whether additional BMPs are needed, and a visual
13 inspection of equipment needed to implement the SWPPP. 1997 Permit, Sections
14 A(9)(a)-(c); 2015 Permit, Section XV.

15 74. Section A(9)(d) of the 1997 Permit requires that the discharger submit an
16 evaluation report that includes an identification of personnel performing the evaluation,
17 the date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for implementing
18 SWPPP revisions, any incidents of non-compliance and the corrective actions taken, and
19 a certification that the discharger is in compliance with the Storm Water Permit. 1997
20 Permit, Section A(9)(d)(i)-(vi). If certification of compliance cannot be provided, the
21 discharger must explain in the evaluation report why the facility is not in compliance with
22 the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be submitted as
23 part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

24 75. The SWPPP and site maps must be assessed annually and revised as
25 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);
26 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

27 **E. The Storm Water Permit Monitoring and Reporting Requirements.**
28

1 76. The 1997 Permit required facility operators to develop and implement a
2 monitoring and reporting program (“M&RP”) when industrial activities begin at a
3 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit requires
4 implementation of an M&RP. 2015 Permit, Sections X(I) and XI. The M&RP must
5 ensure that storm water discharges are in compliance with the Discharge Prohibitions,
6 Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *See*
7 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). The M&RP must ensure
8 that practices at the facility prevent or reduce pollutants in storm water and authorized
9 non-storm water discharges are evaluated and revised to meet changing conditions at the
10 facility, including revision of the SWPPP. *Id.*

11 77. The objectives of the M&RP are to ensure that BMPs have been adequately
12 developed and implemented, revised if necessary, and to ensure that storm water and
13 non-storm water discharges are in compliance with the Storm Water Permit’s Discharge
14 Prohibitions, Effluent Limitations, and Receiving Water Limitations. 1997 Permit,
15 Sections B(2)(a) and B(2)(b); 2015 Permit, Sections X(I) and XI.

16 78. The 2015 Permit requires facility operators to monitor and sample storm
17 water discharges to ensure that the facility is complying with the terms of the Storm
18 Water Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

19 79. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit
20 require that the M&RP shall be revised as necessary to ensure compliance with the Storm
21 Water Permit.

22 80. Section B(4)(a) of the 1997 Permit and Section XI(A) of the 2015 Permit
23 require dischargers to conduct monthly visual observations of storm water discharges.

24 81. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit
25 require dischargers to document the presence of any floating and suspended materials, oil
26 and grease, discolorations, turbidity, or odor in the discharge, and the source of any
27 pollutants in storm water discharges from the facility. Dischargers are required to
28

1 maintain records of observations, observation dates, discharge locations observed, and
2 responses taken to reduce or prevent pollutants from contacting storm water discharges.
3 *See* 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3).

4 82. The Storm Water Permit also requires dischargers to revise the SWPPP as
5 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at
6 the facility. 1997 Permit, Section B(4)(c); 2015 Permit, Section X(B)(1).

7 83. The Storm Water Permit requires dischargers to visually observe and collect
8 samples of storm water discharges from all locations where storm water is discharged.
9 1997 Permit, Sections B(5) and B(7); 2015 Permit Section XI(B)(4).

10 84. Section B(5)(a) of the 1997 Permit required dischargers to collect storm
11 water samples during the first hour of discharge from the first storm event of the Wet
12 Season and at least one (1) other storm event in the Wet Season. All storm water
13 discharge locations must be sampled. Facility operators that do not collect samples from
14 the first storm event of the Wet Season are still required to collect samples from two (2)
15 other storm events of the Wet Season and must explain in the Annual Report why the first
16 storm event was not sampled.

17 85. Section B(15) of the 1997 Permit required dischargers participating in a
18 group monitoring plan to collect at least two (2) samples from each discharge point at the
19 Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15).

20 86. Section XI(B)(3) of the 2015 Permit requires dischargers participating in a
21 compliance group to collect and analyze storm water samples from one (1) QSE within
22 the first half of each reporting year (July 1 to December 31) and one (1) QSE within the
23 second half of each reporting year (January 1 to June 30).

24 87. The Facility was and/or is a member of the Building Materials Industry
25 Group Monitoring Program, and thus the Facility Owner and/or Operator must comply
26 with the group monitoring provisions set forth in Section B(15) of the 1997 Permit and
27 Section XI(B)(3) of the 2015 Permit.

1 88. Section B(5)(b) required that sampling conducted pursuant to the
2 1997 Permit occur during scheduled facility operating hours that are preceded by at least
3 three (3) working days without storm water discharge.

4 89. Section XI(B)(1) of the 2015 Permit requires sampling if a precipitation
5 event produces a discharge for at least one (1) drainage area, and it is preceded by forty-
6 eight (48) hours with no discharge from any drainage area ("QSE").

7 90. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
8 analyze storm water samples from two (2) QSEs within the first half of each reporting
9 year (July 1 to December 31), and two (2) QSEs within the second half of each reporting
10 year (January 1 to June 30).

11 91. Section XI(B)(11) of the 2015 Permit, among other requirements, provides
12 that permittees must submit all sampling and analytical results for all samples via
13 SMARTS within thirty (30) days of obtaining all results for each sampling event.

14 92. Section B(5)(c)(i) of the 1997 Permit required dischargers to analyze each
15 sample for pH, specific conductance ("SC"), TSS, and total organic carbon ("TOC"). A
16 discharger may substitute analysis for O&G instead of TOC.

17 93. Section B(5)(c)(ii) of the 1997 Permit required dischargers to analyze each
18 sample for toxic chemicals and other pollutants likely to be present in significant
19 quantities in the storm water discharged from the facility.

20 94. Section B(5)(c)(iii) and Table D of the 1997 Permit and Table 1 of the 2015
21 Permit require facilities classified as Standard Industrial Classification ("SIC") code 3273
22 (Ready-Mix Concrete), such as the Facility, to also analyze storm water samples for iron,
23 as well as other parameters required by the Regional Board.

24 95. Section XI(B)(6)(a)-(b) of the 2015 Permit requires dischargers to analyze
25 samples for TSS, O&G, and pH.

26 96. Section XI(B)(6)(c) of the 2015 Permit requires dischargers to analyze
27 samples for pollutants associated with industrial operations.
28

1 97. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze
2 storm water samples for additional applicable industrial parameters related to receiving
3 waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

4 98. Section B(14) of the 1997 Permit required that dischargers submit an Annual
5 Report to the applicable Regional Board by July 1 of each year. The Annual Report must
6 include a summary of visual observations and sampling results, an evaluation of the
7 visual observations and sampling and analysis results, laboratory reports, the annual
8 comprehensive site compliance evaluation report specified in Section A(9), an
9 explanation of why a facility did not implement any activities required, and the records
10 specified in Section B(13)(i).

11 99. Section XVI of the 2015 Permit requires dischargers to submit an annual
12 report with a Compliance Checklist that indicates whether a discharger complies with,
13 and has addressed all applicable requirements of the 2015 Permit, an explanation for any
14 non-compliance of requirements within the reporting year, as indicated in the Compliance
15 Checklist, an identification, including page numbers and/or Sections, of all revisions
16 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

17 **IV. FACTUAL BACKGROUND**

18 **A. Facility Site Description.**

19 100. Coastkeeper is informed and believes, and thereon alleges, that the Facility
20 is an active concrete batch plant.

21 101. Coastkeeper is informed and believes, and thereon alleges, that the Facility
22 is 3.0 acres.

23 102. Coastkeeper is informed and believes, and thereon alleges, that raw
24 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures
25 are delivered to and stored at the Facility.
26
27
28

1 103. Coastkeeper is informed and believes, and thereon alleges, that raw
2 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures
3 are mixed with water to create concrete at the Facility.

4 104. Coastkeeper is informed and believes, and thereon alleges, that raw
5 materials, including aggregate (rock, sand, and gravel), cement, fly ash, water, and (if
6 applicable) admixtures are added to concrete haul trucks at the Facility that mix the
7 ingredients together to produce concrete that haul the concrete off site.

8 105. Coastkeeper is informed and believes, and thereon alleges, that the concrete
9 production process at the Facility also includes onsite vehicle and mobile equipment
10 operating, parking, fueling, and maintenance.

11 106. Coastkeeper is informed and believes, and thereon alleges, that the Facility
12 includes a batch plant.

13 107. Coastkeeper is informed and believes, and thereon alleges, that the Facility
14 includes a fuel storage area.

15 108. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 handles hazardous material throughout the site because vehicles and mobile equipment
17 can be located throughout the site and that significant quantities of hazardous materials
18 are stored and used in the Fuel Storage Area and the Admixture Storage Area.

19 109. Coastkeeper is informed and believes, and thereon alleges, that the Facility
20 includes outdoor storage areas.

21 110. Coastkeeper is informed and believes, and thereon alleges, that the Facility
22 includes cement silos.

23 111. Coastkeeper is informed and believes, and thereon alleges, that the Facility
24 includes fly ash silos.

25 112. Coastkeeper is informed and believes, and thereon alleges, that the Facility
26 includes admixture storage areas.

1 113. Coastkeeper is informed and believes, and thereon alleges, that the Facility
2 includes a truck washing area.

3 114. Coastkeeper is informed and believes, and thereon alleges, that the Facility
4 includes material unloading and loading areas.

5 115. Coastkeeper is informed and believes, and thereon alleges, that the Facility
6 includes a permitted underground fuel storage tank.

7 **B. The Facility's Storm Water Permit Coverage.**

8 116. Coastkeeper is informed and believes, and thereon alleges, that the Facility
9 Owner and/or Operator obtained Storm Water Permit coverage by submitting a Notice of
10 Intent to the State Board, which confirmed the receipt and processing of the Notice of
11 Intent on November 20, 1997 ("1997 NOI Receipt").

12 117. Coastkeeper is informed and believes, and thereon alleges, that the Facility
13 Owner and/or Operator submitted an NOI on September 29, 2015, to continue its Storm
14 Water Permit coverage for the Facility under the 2015 Permit.

15 118. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 Owner and/or Operator identified the owner/operator of the Facility as "Robertsons
17 Ready Mix" and the Facility name and location as "Robertsons Ready Mix San
18 Clemente, 116 Rincon Ct., San Clemente, CA 92672."

19 119. The 2015 NOI lists the Facility as 3.0 acres.

20 120. The 2015 NOI lists the industrial area exposed to storm water as 17800
21 Sq.Feet.

22 121. The 2015 NOI does not list the percentage of imperviousness.

23 122. The State Board's electronic database, called the Storm Water Multiple
24 Application & Report Tracking System ("SMARTS"), the 1997 NOI Receipt and 2015
25 NOI list the current Facility Waste Discharge Identification ("WDID") number as
26 930I013199.

1 123. SMARTS lists the Facility's coverage under the Storm Water Permit as
2 "Active."

3 124. The 1997 NOI and the 2015 NOI list a SIC code for the Facility as 3273
4 (Ready-Mixed Concrete).

5 125. Section 6.1 of the Facility SWPPP identifies mobile equipment operation,
6 fueling, and maintenance, and vehicle and equipment parking, as industrial processes that
7 are conducted at the Facility.

8 126. Coastkeeper is informed and believes, and thereon alleges, that SIC code
9 4214 (local trucking with storage) applies to the Facility.

10 127. A facility classified as SIC code 3273 requires Storm Water Permit coverage
11 for the entire facility. 1997 Permit, Attachment 1, Section 4; *see also* 2015 Permit,
12 Attachment A, ¶ 2.

13 128. Coastkeeper is informed and believes, and thereon alleges, that the entire
14 Facility requires Storm Water Permit coverage because the industrial activities at the
15 Facility are classified as SIC code 3273.

16 129. The 2014/2015 Building Material Industry Group Monitoring Plan lists the
17 Facility as 3.0 acres.

18 130. The 2014/2015 Building Material Industry Group Monitoring Plan lists the
19 Facility as 90% impervious.

20 131. The Facility SWPPP states the Facility is approximately 85% impervious.
21 *See* SWPPP, at 5.

22 132. The Facility SWPPP states the Facility is considered as three (3) Drainage
23 Areas, "Drainage Area 1 (DA1)," "Drainage Area 2 (DA2)," and "Drainage Area 3
24 (DA3)." *See* SWPPP, at 5.

25 133. Coastkeeper is informed and believes, and thereon alleges, that the
26 2015 NOI erroneously failed to list the percentage of imperviousness at the Facility.

27 134. Coastkeeper is informed and believes, and thereon alleges, that to the extent
28

1 the Facility Owners and/or Operators have or intend to limit the Storm Water Permit
2 coverage at the Facility based on the asserted acreage “exposed to storm water,”
3 Coastkeeper puts the Facility Owners and/or Operators on notice that they have not
4 complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the
5 required “no exposure” certification. Further, to the extent the Facility Owners and/or
6 Operators failed to obtain Permit coverage for all areas of industrial activity at the
7 Facility, storm water discharges associated with industrial activities from unpermitted
8 portions of the Facility violate section 301(a) of the Clean Water Act.

9 **C. Defendant’s SWPPP and M&RP for the Facility.**

10 135. The Facility SWPPP and M&RP publicly available via the SMARTS
11 database is dated October 2, 2015.

12 136. Coastkeeper is informed and believes, and thereon alleges, that the SWPPP
13 and M&RP dated October 2, 2015, is the current SWPPP and M&RP for the Facility
14 (“Facility SWPPP”).

15 **D. Industrial Activities, Pollutant Sources, Pollutants, and BMPs at the**
16 **Facility.**

17 137. Coastkeeper is informed and believes, and thereon alleges, that the Facility’s
18 industrial activities and areas of industrial activity are pollutant sources.

19 138. Coastkeeper is informed and believes, and thereon alleges, that the Facility’s
20 industrial activities and areas include, but are not limited to: receiving raw materials
21 (aggregate, cement, fly ash, admixtures) from off site; concrete production in the batch
22 plant, loading finished product into ready mix trucks for delivery to customers; concrete
23 mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw
24 materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and
25 recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment;
26 storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new
27 vehicle fluids, and hazardous waste vehicle fluids; washing concrete mixer trucks; and
28

1 vehicle and equipment parking, fueling, and maintenance.

2 139. Section 4 of the Facility SWPPP references Appendix A, Figure 1 (site
3 location map), and Figure 2 (site plan). However, the Facility SWPPP does not include
4 Appendix A, Figure 1, and Figure 2.

5 140. Section 5 and Table 1 of the Facility SWPPP provide brief descriptions of
6 the areas where industrial activities are conducted at the Facility.

7 141. Coastkeeper is informed and believes, and thereon alleges, that the Facility
8 SWPPP does not include all areas of industrial activity at the Facility.

9 142. Coastkeeper is informed and believes, and thereon alleges, that the Facility
10 SWPPP does not adequately describe all industrial processes at the Facility.

11 143. Coastkeeper is informed and believes, and thereon alleges, that the Facility
12 SWPPP does not adequately describe all dust and particulate generating activities.

13 144. Coastkeeper is informed and believes, and thereon alleges, that a site map
14 dated April 9, 2015 ("April 9 map"), was uploaded to SMARTS on October 22, 2015,
15 and that the April 9 map is a map of the Facility submitted pursuant to Section II(B)(3)(a)
16 of the 2015 Permit.

17 145. Coastkeeper is informed and believes, and thereon alleges, that the Facility
18 SWPPP does not include a separate copy of the April 9 map or any other site map of the
19 Facility.

20 146. Coastkeeper is informed and believes, and thereon alleges, that the April 9
21 map does not identify all areas of industrial activity at the Facility.

22 147. The 2014/2015 Building Material Industry Group Monitoring Plan lists the
23 Facility as having one (1) discharge location.

24 148. The Facility SWPPP states that storm water that falls within DA1 flows to
25 either the sump, reclaimer pits, or detention basin and that if overflow from this area
26 occurs, runoff flows to an outlet which discharges into Segunda Deshecha Creek.

27 149. Coastkeeper is informed and believes, and thereon alleges, that the April 9
28

1 map does not include locations and descriptions of structural control measures that affect
2 industrial storm water discharges.

3 150. Coastkeeper is informed and believes, and thereon alleges, that the April 9
4 map does not identify locations where materials are directly exposed to precipitation.

5 151. Section 6.7 of the Facility SWPPP states that the "Facility is located in a
6 relatively level area. There is limited potential for run on from neighboring operations."

7 152. Coastkeeper is informed and believes, and thereon alleges, that the Facility
8 SWPPP information regarding offsite run on is false because a public view of the Facility
9 shows the drainage from the street flows onto the Facility.

10 153. Coastkeeper is informed and believes, and thereon alleges, that the April 9
11 map does fail to include details of offsite run on to the Facility.

12 154. Coastkeeper is informed and believes, and thereon alleges, that the April 9
13 map does fail to include details of the site gradient.

14 155. Coastkeeper is informed and believes, and thereon alleges, that the April 9
15 map does not include notes, legends, and other data appropriate to ensure the site map is
16 clear, legible, and understandable.

17 156. Coastkeeper is informed and believes, and thereon alleges, that industrial
18 activities occur throughout the Facility outdoors without adequate cover to prevent storm
19 water exposure to pollutant sources.

20 157. Coastkeeper is informed and believes, and thereon alleges, that industrial
21 activities occur throughout the Facility outdoors without secondary containment or other
22 adequate treatment measures to prevent polluted storm water from discharging from the
23 Facility.

24 158. Coastkeeper is informed and believes, and thereon alleges, that because the
25 Facility SWPPP fails to describe all of the Facility's industrial activities, the Facility
26 SWPPP also fails to describe all of the significant materials and processes that are related
27 to the Facility's industrial activities.

1 159. Coastkeeper is informed and believes, and thereon alleges, that because all
2 significant materials have not been identified, the Facility SWPPP fails to describe the
3 locations where the materials are stored, received, shipped, and handled, or the typical
4 quantities and frequency of significant materials at the Facility.

5 160. Section 5.0, Table 1, and Section 6.8 of the SWPPP identify potential
6 pollutants associated with the Facility's industrial activities.

7 161. Coastkeeper is informed and believes, and thereon alleges, that the Facility
8 SWPPP fails to describe all of the pollutants associated with the Facility's industrial
9 activities.

10 162. Coastkeeper is informed and believes, and thereon alleges, that the Facility
11 Owner and/or Operator has failed and continues to fail to adequately assess pollutants
12 associated with potential pollutant sources at the Facility.

13 163. Coastkeeper is informed and believes, and thereon alleges, that the Facility
14 SWPPP does not include an adequate assessment of pollutants associated with potential
15 pollutant sources at the Facility.

16 164. Coastkeeper is informed and believes, and thereon alleges, that pollutants
17 associated with the Facility include, but are not limited to: pH-affecting substances;
18 metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium,
19 copper, and arsenic; COD; BOD; TSS; benzene; gasoline and diesel fuels; fuel additives;
20 coolants; trash; and O&G.

21 165. Section 6.8 and Table 3 of the Facility SWPPP identify the BMPs for the
22 areas of industrial activity at the Facility.

23 166. Section 8.0, Table 5, and Table 6 of the Facility SWPPP lists the BMPs at
24 the Facility.

25 167. Coastkeeper is informed and believes, and thereon alleges, that the Facility
26 SWPPP fails to describe adequate BMPs to reduce or prevent pollutants in the Facility's
27 discharges.

1 168. Coastkeeper is informed and believes, and thereon alleges, that without
2 properly identifying all industrial activities at the Facility in the SWPPP, the Facility
3 Owner and/or Operator cannot and has not developed all appropriate BMPs.

4 169. Coastkeeper is informed and believes, and thereon alleges, that without
5 properly identifying all industrial activities at the Facility in the SWPPP, the Facility
6 Owner and/or Operator cannot and has not implemented all appropriate BMPs.

7 170. Coastkeeper is informed and believes, and thereon alleges, that without
8 properly identifying all significant materials at the Facility in the SWPPP, the Facility
9 Owner and/or Operator cannot and has not developed all appropriate BMPs.

10 171. Coastkeeper is informed and believes, and thereon alleges, that without
11 properly identifying all significant materials at the Facility in the SWPPP, the Facility
12 Owner and/or Operator cannot and has not implemented all appropriate BMPs.

13 172. Coastkeeper is informed and believes, and thereon alleges, that the Facility
14 SWPPP does not include an adequate assessment of potential pollutant sources at the
15 Facility.

16 173. Coastkeeper is informed and believes, and thereon alleges, that the Facility
17 Owner and/or Operator has failed and continues to fail to assess the Facility's BMPs
18 corresponding to potential pollutant sources and associated pollutants.

19 174. Coastkeeper is informed and believes, and thereon alleges, that the Facility
20 SWPPP does not include an adequate assessment of the Facility's BMPs corresponding to
21 potential pollutant sources and associated pollutants.

22 175. Coastkeeper is informed and believes, and thereon alleges, that the Facility
23 Owner and/or Operator has failed and continues to fail to assess potential pollutant
24 sources at the Facility.

25 176. Coastkeeper is informed and believes, and thereon alleges, that the Facility
26 SWPPP does not include an adequate description of the Facility BMPs.

27 177. Coastkeeper is informed and believes, and thereon alleges, that the Facility
28

1 Owner and/or Operator has failed and continues to fail to analyze the effectiveness of the
2 BMPs at the Facility.

3 178. Coastkeeper is informed and believes, and thereon alleges, that the Facility
4 SWPPP does not include an adequate analysis of the effectiveness of the BMPs at the
5 Facility.

6 179. Coastkeeper is informed and believes, and thereon alleges, that storm water
7 sampling at the Facility demonstrates that the Facility's storm water discharges contain
8 concentrations of pollutants above the EPA Benchmarks, including, but not limited to:
9 TSS, COD, Aluminum, and iron.

10 180. Coastkeeper is informed and believes, and thereon alleges, that the
11 significant and repeated exceedances of EPA Benchmarks demonstrate that the Facility
12 Owner and/or Operator failed and continues to fail to develop BMPs to prevent the
13 exposure of pollutants to storm water, and to prevent discharges of polluted storm water
14 from the Facility.

15 181. Coastkeeper is informed and believes, and thereon alleges, that the
16 significant and repeated exceedances of EPA Benchmarks demonstrate that the Facility
17 Owner and/or Operator failed and continues to fail to implement BMPs to prevent the
18 exposure of pollutants to storm water, and to prevent discharges of polluted storm water
19 from the Facility.

20 182. Coastkeeper is informed and believes, and thereon alleges, that the Facility
21 Owner and/or Operator has failed and continues to fail to adequately revise the SWPPP.

22 183. Coastkeeper is informed and believes, and thereon alleges, that the normal
23 operating hours of the Facility are Monday through Saturday, 5:00 am to 6:00 pm.

24 **E. Discharge Locations at the Facility.**

25 184. In the Facility SWPPP, the Facility Owner and/or Operator identifies two (2)
26 discharge points located at the Facility labeled as "Outfall 1 (OF1)" and "Outfall 3
27 (OF3)". *See* SWPPP, at 5.

1 185. Section 4.1 of the Facility SWPPP states that Drainage Area 1 (DA1)
2 “includes the batch plant area and the western side of the property. Storm water that falls
3 within DA1 flows to either the sump, reclaimer pits, or detention basin (which are all in
4 close proximity to the plant). If overflow from this area occurs, runoff flow to an outlet
5 which discharges into Segunda Deshecha Creek. Outflow from DA1 could potentially be
6 impacted by industrial operations. Therefore, OF1 will be sampled upon the occurrence
7 of storm water discharge.”

8 186. Section 4.1 of the Facility SWPPP states that Drainage Area 2 (DA2)
9 “encompasses the southern portion of the facility, including the driveway. Storm water
10 that falls in this zone sheet flows westerly to DA1.”

11 187. Section 4.1 of the Facility SWPPP states that Drainage Area 3 (DA3) “is
12 comprised of the eastern region of the facility. Rain water entering DA3 sheet flows into
13 Rincon Court and the storm drain system by way of the cul-de-sac driveway. This feature
14 is subsequently considered to be Outfall 3 (OF3).”

15 188. Section 4.1 indicates that OF1 will be sampled upon the occurrence of storm
16 water discharge and OF3 will be sampled upon the occurrence of storm water discharge.

17 189. Section 1.0 of the Facility SWPPP also states that, “[t]he Concrete batch
18 Plant area is paved with concrete and is constructed in a shallow retention pond area
19 which collects industrial waste water during normal operations. Waste water is generated
20 from washing down trucks and flows into the 3 pit reclaimer system. Overflow from the
21 wash out basins flows to a sump located near the center of the plant. The sump collects
22 runoff from the operations, which is pumped back to the plant and reused. Pollutants that
23 settle into the bottom of the sump are collected, dried, and used in the concrete recycling
24 process. Concrete swales direct flows around the plant are to an On-Site Detention Basin.
25 Overflow from the on-site detention basin is discharged from the site at the south
26 driveway where it enters the storm drain system.”
27
28

1 190. Coastkeeper is informed and believes, and thereon alleges, that storm water
2 is also collected in a sump at the Facility such that non-storm water and storm water is
3 commingled.

4 191. The April 9 map available on the SMARTS database shows an "Outfall #1"
5 located at the back of the Facility near the Segunda Deshecha Creek.

6 192. Coastkeeper is informed and believes, and thereon alleges, that the Outfall 1
7 and Outfall 3, as described by the Facility SWPPP, are not located on the April 9 map.

8 193. The 2014/2015 Building Materials Industry Group Monitoring Plan for the
9 Facility reports that there is one (1) storm water discharge location at the Facility.

10 194. Coastkeeper is informed and believes, and thereon alleges, that the Facility
11 Owners and/or Operators have failed to update the April 9 map to be consistent with the
12 Facility SWPPP.

13 195. Coastkeeper is informed and believes that an additional and/or alternative
14 discharge point at the Facility is located behind the batch plant area in the southwest
15 portion of the Facility. This discharge point discharges into Segunda Deshecha Creek and
16 is not identified in the Facility SWPPP, but is identified as "Outfall #1" in the April 9 site
17 map.

18 196. Coastkeeper is informed and believes that there are between one (1) and
19 three (3) discharge points at the Facility.

20 197. Coastkeeper is informed and believes, and thereon alleges, that the
21 pollutants associated with the Facility have been and continue to be tracked throughout
22 the Facility.

23 198. Coastkeeper is informed and believes, and thereon alleges, that trucks and
24 vehicles track sediment, dirt, oil and grease, metal particles, and other pollutants off-site
25 via the driveway from the Facility.

1 199. Coastkeeper is informed and believes, and thereon alleges, that the Facility
2 SWPPP provides no sizing information for the sump basin(s) at the Facility
3 demonstrating the retention capacity of the sump basin(s).

4 200. Coastkeeper is informed and believes, and thereon alleges, that the Facility
5 Owner and/or Operator collected a storm water sample at "OF1" at the Facility on
6 January 5, 2016, and that on that same date a nearby rain gage located at Oceanside
7 Mcolf Camp Pendleton (Rain Station ID KNXF) recorded 0.26 inches of rain.

8 **F. The Facility's Discharges to the Receiving Waters.**

9 201. Coastkeeper is informed and believes, and thereon alleges, that the discharge
10 point(s) at the Facility discharges in the Segunda Deshecha Creek, which flows to the
11 Pacific Ocean at North Beach.

12 202. Coastkeeper is informed and believes, and thereon alleges, that each of the
13 Receiving Waters is a water of the United States.

14 203. Coastkeeper is informed and believes, and thereon alleges, that polluted
15 storm water and non-storm water discharges from the Facility to the Receiving Waters.

16 **G. Defendant's Sampling, Monitoring, and Reporting.**

17 204. Via the SMARTS database, Coastkeeper obtained an Annual Report for the
18 Facility dated July 8, 2014.

19 205. Coastkeeper is informed and believes, and thereon alleges, that the Annual
20 Report dated July 8, 2014, obtained from the SMARTS database is the 2013/2014 Annual
21 Report for the Facility.

22 206. Coastkeeper is informed and believes, and thereon alleges, that the Facility
23 Owner and/or Operator failed to submit Annual Reports for the 2010/2011, 2011/2012,
24 2012/2013, and 2014/2015 reporting years.

25 207. Coastkeeper is informed and believes, and thereon alleges, that the Facility
26 Owner and/or Operator failed to develop an adequate M&RP.

27 208. Coastkeeper is informed and believes, and thereon alleges, that the Facility
28

1 Owner and/or Operator failed to report any storm water sampling during the reporting
2 year covered by the 2013/2014 Annual Report.

3 209. Coastkeeper is informed and believes, and thereon alleges, that the Facility
4 Owner and/or Operator failed to analyze the Facility's January 5, 2016, storm event
5 sample for all required contaminants, including aluminum, copper, and lead, in violation
6 of Section XI(B)(6) of the 2015 Permit.

7 210. The Facility SWPPP states the storm water that is discharged from the site
8 flows into the Segunda Deshecha Creek, which quickly deposits into the Pacific Ocean at
9 North Beach. *See* SWPPP, at 33.

10 211. The Facility SWPPP and 2012 303(d) List identifies Segunda Deshecha
11 Creek as impaired for pollutants including phosphorous, toxicity, and turbidity. *See*
12 SWPPP, at 33.

13 212. The Facility SWPPP states that none of these parameters are generated by
14 the Facility, and that storm water samples will not be analyzed for those parameters. *See*
15 SWPPP, at 33.

16 213. The EPA's *Industrial Stormwater Fact Sheet Series, Sector E* states
17 "Concrete Product Manufacturing" facilities and "All Facilities" in Sector E include
18 associated pollutants of lead, iron, zinc, and aluminum.

19 214. Coastkeeper is informed and believes, and thereon alleges, that contributing
20 pollutants to these impaired waters include aluminum, copper and lead.

21 215. Coastkeeper is informed and believes, and thereon alleges, that the Facility
22 has failed to identify industrial pollutants related to the Receiving Waters with Section
23 303(d) listed impairments that may be causing or contributing to an exceedance of a
24 WQS, as required by Section X(G)(2)(a)(ix) of the 2015 Permit.

25 216. Coastkeeper is informed and believes, and thereon alleges, that the Facility
26 has failed to analyze storm water samples for pollutants related to the Receiving Waters
27 with 303(d) listed impairments that may be causing or contributing to an exceedance of a
28

1 WQS, as required by Section XI(B)(6)(e) of the 2015 Permit.

2 2010/2011 Annual Report

3 217. Coastkeeper is informed and believes, and thereon alleges, that the Facility
4 Owner and/or Operator failed to submit an Annual Report for the Facility for the
5 2010/2011 reporting year.

6 2011/2012 Annual Report

7 218. Coastkeeper is informed and believes, and thereon alleges, that the Facility
8 Owner and/or Operator failed to submit an Annual Report for the Facility for the
9 2011/2012 reporting year.

10 2012/2013 Annual Report

11 219. Coastkeeper is informed and believes, and thereon alleges, that the Facility
12 Owner and/or Operator failed to submit an Annual Report for the Facility for the
13 2012/2013 reporting year.

14 2013/2014 Annual Report

15 220. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 Owner and/or Operator failed to report the number of discharge locations at the Facility
17 in the 2013/2014 Annual Report.

18 221. Coastkeeper is informed and believes, and thereon alleges, that Facility
19 Owner and/or Operator failed to include the required summary of its quarterly visual
20 observations of unauthorized non-storm water discharges for each of its drainage areas in
21 the 2013/2014 Annual Report.

22 222. Coastkeeper is informed and believes, and thereon alleges, that the Facility
23 Owner and/or Operator failed to include the required evaluation of its quarterly visual
24 observations of unauthorized non-storm water discharges for each of its drainage areas in
25 the 2013/2014 Annual Report.

26 223. Coastkeeper is informed and believes, and thereon alleges, that the Facility
27 Owner and/or Operator failed to indicate the location of non-storm water visual
28

1 observations to document which discharge areas were observed in the 2013/2014 Annual
2 Report.

3 224. Coastkeeper is informed and believes, and thereon alleges, that the Facility
4 Owner and/or Operator failed to include the required summary of its monthly visual
5 observations of storm water discharges for each of its discharge points in the 2013/2014
6 Annual Report.

7 225. Coastkeeper is informed and believes, and thereon alleges, that the Facility
8 Owner and/or Operator failed to include the required evaluation of its monthly visual
9 observations of storm water discharges for each of its discharge points in the 2013/2014
10 Annual Report.

11 226. Coastkeeper is informed and believes, and thereon alleges, that the Facility
12 Owner and/or Operator failed to include the required summary of the presence of any
13 floating and suspended material, O&G, discolorations, turbidity, odor, and source of
14 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

15 227. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 Owner and/or Operator failed to include the required evaluation of the presence of any
17 floating and suspended material, O&G, discolorations, turbidity, odor, and source of
18 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

19 228. Coastkeeper is informed and believes, and thereon alleges, that the Building
20 Materials Industry Group Monitoring Plan required the Facility Owner and/or Operator to
21 collect and analyze at least one (1) storm water sample during the 2013/2014 wet season.

22 229. Coastkeeper is informed and believes, and thereon alleges, that at least four
23 (4) qualifying rain events occurred in the 2013/2014 Wet Season.

24 230. Coastkeeper is informed and believes, and thereon alleges, that during the
25 2013/2014 Wet Season the Facility Owner and/or Operator failed to collect any storm
26 water samples.

27 231. Coastkeeper is informed and believes, and thereon alleges, that the Facility
28

1 Owner and/or Operator failed to analyze all storm water samples collected for all
2 required parameters, including pollutants likely to be present in the Facility storm water
3 discharges in significant quantities, such as iron, aluminum, copper, and zinc, during the
4 2013/2014 Wet Season.

5 232. Coastkeeper is informed and believes, and thereon alleges, that the Facility
6 Owner and/or Operator failed to include the required sampling and analysis exemptions,
7 reductions, and results in the 2013/2014 Annual Report.

8 233. Coastkeeper is informed and believes, and thereon alleges, that the Facility
9 Owner and/or Operator failed to complete the Annual Comprehensive Site Compliance
10 Evaluation for the 2013/2014 reporting year in violation of Section A.9 of the 1997
11 Permit.

12 234. Coastkeeper is informed and believes, and thereon alleges, that the Facility
13 Owner and/or Operator failed to certify whether the Facility was in compliance with the
14 Storm Water Permit in its 2013/2014 Annual Report.

15 235. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 Owner and/or Operator failed to describe instances of the Facility's noncompliance with
17 the Storm Water Permit in its 2013/2014 Annual Report.

18 236. Coastkeeper is informed and believes, and thereon alleges, that the Facility
19 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence
20 of its noncompliance with the Storm Water Permit in its 2013/2014 Annual Report.

21 2014/2015 Annual Report

22 237. Coastkeeper is informed and believes, and thereon alleges, that the Facility
23 Owner and/or Operator failed to submit an Annual Report for the Facility for the
24 2014/2015 reporting year.

25 2015/2016 Annual Report

26 238. Coastkeeper is informed and believes, and thereon alleges, that no later than
27 July 15, 2016, pursuant to Section XVI of the 2015 Permit, the Facility Owner and/or
28

1 Operator was required to certify and submit via SMARTS a 2015/2016 Annual Report
2 using the standardized format and checklists in SMARTS.

3 239. Coastkeeper is informed and believes, and thereon alleges, that the publicly
4 available portion of the SMARTS database for the Facility does not include a 2015/2016
5 Annual Report for the Facility for the 2015/2016 reporting year.

6 **V. CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**

8 **Defendant's Discharges of Contaminated Storm Water in Violation**
9 **of the Storm Water Permit Effluent Limitations and the Clean**
10 **Water Act.**

11 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

12 240. Coastkeeper incorporates the allegations contained in the above paragraphs
13 as though fully set forth herein.

14 241. Coastkeeper is informed and believes, and thereon alleges, that Defendant
15 failed and continues to fail to reduce or prevent pollutants associated with industrial
16 activities at the Facility from discharging from the Facility through implementation of
17 BMPs that achieve BAT/BCT.

18 242. Coastkeeper is informed and believes, and thereon alleges, that discharges of
19 storm water containing levels of pollutants that do not achieve compliance with
20 BAT/BCT standards from the Facility occur every time storm water discharges from the
21 Facility. Defendant's failure to develop and/or implement BMPs that achieve the
22 pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of
23 the Storm Water Permit and the CWA. *See* 1997 Permit, Effluent Limitation B(3); 2015
24 Permit, Section I(D) (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

25 243. The Facility Owner and/or Operator violates and will continue to violate the
26 Storm Water Permit Effluent Limitations each and every time storm water containing
27 levels of pollutants that do not achieve BAT/BCT standards discharges from the Facility.

28 244. Coastkeeper is informed and believes, and thereon alleges, that the Facility

1 Owner's and/or Operator's violations of Effluent Limitations of the Storm Water Permit
2 and the Clean Water Act are ongoing and continuous.

3 245. Each and every violation of the Storm Water Permit Effluent Limitations is a
4 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

5 246. By committing the acts and omissions alleged above, the Facility Owner
6 and/or Operator is subject to an assessment of civil penalties for each and every violation
7 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and
8 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

9 247. An action for injunctive relief is authorized by CWA Section 505(a),
10 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
11 would irreparably harm Coastkeeper, its members, and the citizens of the State of
12 California, for which harm Coastkeeper has no plain, speedy, or adequate remedy at law.

13 248. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
14 an actual controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
16 hereafter.

17 **SECOND CAUSE OF ACTION**

18 **Defendant's Discharges of Contaminated Storm Water in Violation**
19 **of Storm Water Permit Receiving Water Limitations and the Clean**
20 **Water Act.**

21 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

22 249. Coastkeeper incorporates the allegations contained in the above paragraphs
23 as though fully set forth herein.

24 250. Coastkeeper is informed and believes, and thereon alleges, that discharges of
25 storm water containing levels of pollutants that adversely impact human health and/or the
26 environment from the Facility occur each time storm water discharges from the Facility.

27 251. Coastkeeper is informed and believes, and thereon alleges, that storm water
28 containing levels of pollutants that cause or contribute to exceedances of water quality

standards has discharged and continues to discharge from the Facility each time storm water discharges from the Facility.

252. The Facility Owner and/or Operator violates and will continue to violate the Storm Water Permit Receiving Water Limitations each and every time storm water containing levels of pollutants that adversely impact human health and/or the environment, and that cause or contribute to exceedances of WQS, discharges from the Facility.

253. Coastkeeper is informed and believes, and thereon alleges, that the Facility Owner's and/or Operator's violations of Receiving Water Limitations of the Storm Water Permit and the CWA are ongoing and continuous.

254. Each and every violation of the Storm Water Permit Receiving Water Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

255. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

256. An action for injunctive relief under the Clean Water Act is authorized by Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Coastkeeper, Coastkeeper's members, and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

257. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

THIRD CAUSE OF ACTION

**Defendant's Discharges of Non-Storm Water in Violation of the
Storm Water Permit and the Clean Water Act.**

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

258. Coastkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

259. Coastkeeper is informed and believes, and thereon alleges, that prohibited non-storm water discharges from the Facility occur due to inadequate BMP development and/or implementation necessary to prevent these discharges, including during concrete and water truck filling, truck washing and cleaning activities are conducted.

260. Coastkeeper is informed and believes, and thereon alleges, that prohibited non-storm water discharges have discharged and continue to discharge from the Facility, in violation of the Storm Water Permit and/or CWA Section 301(a). 33 U.S.C. § 1311(a).

261. Coastkeeper is informed and believes, and thereon alleges, that the Facility Owner's and/or Operator's violations of Discharge Prohibitions of the Storm Water Permit are ongoing and continuous.

262. Each and every violation of the Storm Water Permit's Discharge Prohibitions is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

263. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

264. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Coastkeeper, Coastkeeper's members, and the citizens of the State of California, for which harm they has no plain, speedy, or adequate remedy at law.

1 265. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
2 an actual controversy exists as to the rights and other legal relations of the Parties.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
4 hereafter.

5 **FOURTH CAUSE OF ACTION**

6 **Defendant's Failure to Adequately Develop, Implement, and/or**
7 **Revise a Storm Water Pollution Prevention Plan in Violation of the**
8 **Storm Water Permit and the Clean Water Act.**

9 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

10 266. Coastkeeper incorporates the allegations contained in the above paragraphs
11 as though fully set forth herein.

12 267. Coastkeeper is informed and believes, and thereon alleges, that the Facility
13 Owner and/or Operator has failed and continues to fail to develop an adequate SWPPP
14 for the Facility, in violation of the Storm Water Permit.

15 268. Coastkeeper is informed and believes, and thereon alleges, that the Facility
16 Owner and/or Operator has failed and continues to fail to adequately implement a
17 SWPPP for the Facility, in violation of the Storm Water Permit.

18 269. Coastkeeper is informed and believes, and thereon alleges, that Facility
19 Owner and/or Operator has failed and continues to fail to adequately revise a SWPPP for
20 the Facility, in violation of the Storm Water Permit.

21 270. The Facility Owner and/or Operator has been in violation of the Storm
22 Water Permit at the Facility every day from June 3, 2011, to the present.

23 271. The Facility Owner's and/or Operator's violations of the Storm Water
24 Permit and the CWA at the Facility are ongoing and continuous.

25 272. The Facility Owner and/or Operator will continue to be in violation of the
26 Storm Water Permit and the CWA each and every day the Facility Owner and/or
27 Operator fails to adequately develop, implement, and/or revise the SWPPP for the
28

1 Facility.

2 273. Each and every violation of the Storm Water Permit SWPPP requirements at
3 the Facility is a separate and distinct violation of the CWA.

4 274. By committing the acts and omissions alleged above, the Facility Owner
5 and/or Operator is subject to an assessment of civil penalties for each and every violation
6 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and
7 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

8 275. An action for injunctive relief under the CWA is authorized by Section
9 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and
10 omissions alleged above would irreparably harm Coastkeeper, its members, and the
11 citizens of the State of California, for which harm they have no plain, speedy, or adequate
12 remedy at law.

13 276. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
14 an actual controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth
16 hereafter.

17 **FIFTH CAUSE OF ACTION**

18 **Defendant's Failure to Adequately Develop, Implement, and/or**
19 **Revise a Monitoring and Reporting Plan in Violation of the Storm**
20 **Water Permit and the Clean Water Act.**

21 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

22 277. Coastkeeper incorporates the allegations contained in the above paragraphs
23 as though fully set forth herein.

24 278. Coastkeeper is informed and believes, and thereon alleges, that the Facility
25 Owner and/or Operator has failed and continues to fail to develop an adequate M&RP for
26 the Facility, in violation of the Storm Water Permit.

27 279. Coastkeeper is informed and believes, and thereon alleges, that the Facility
28 Owner and/or Operator has failed and continues to fail to adequately implement an
Complaint

1 M&RP for the Facility, in violation of the Storm Water Permit.

2 280. Coastkeeper is informed and believes, and thereon alleges, that the Facility
3 Owner and/or Operator has failed and continues to fail to adequately revise an M&RP for
4 the Facility, in violation of the Storm Water Permit.

5 281. The Facility Owner and/or Operator has been in violation of the Storm
6 Water Permit's monitoring requirements at the Facility every day from June 3, 2011, to
7 the present.

8 282. The Facility Owner's and/or Operator's violations of the Storm Water
9 Permit's monitoring requirements and the CWA at the Facility are ongoing and
10 continuous.

11 283. The Facility Owner and/or Operator will continue to be in violation of
12 Section B and Provision E(3) the 1997 Permit, Section XI of the 2015 Permit, and the
13 CWA each and every day it fails to adequately develop, implement, and/or revise an
14 M&RP for the Facility.

15 284. Each and every violation of the Storm Water Permit M&RP requirements at
16 the Facility is a separate and distinct violation of the CWA.

17 285. By committing the acts and omissions alleged above, the Facility Owner
18 and/or Operator is subject to an assessment of civil penalties for each and every violation
19 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and
20 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

21 286. An action for injunctive relief under the CWA is authorized by Section
22 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and
23 omissions alleged above would irreparably harm Coastkeeper, its members, and the
24 citizens of the State of California, for which harm they have no plain, speedy, or adequate
25 remedy at law.

26 287. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
27 an actual controversy exists as to the rights and other legal relations of the Parties.

1 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth
2 hereafter.

3 **SIXTH CAUSE OF ACTION**

4 **Defendant's Failure to Report as Required by the Storm Water**
5 **Permit in Violation of the Storm Water Permit and the Clean**
6 **Water Act.**

7 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

8 288. Coastkeeper incorporates the allegations contained in the above paragraphs
9 as though fully set forth herein.

10 289. Coastkeeper is informed and believes, and thereon alleges, that the Facility
11 Owner and/or Operator has failed and continues to fail to submit accurate Annual Reports
12 to the Regional Board, in violation of Sections B(14), C(9), and C(10) of the 1997
13 Permit.

14 290. Coastkeeper is informed and believes, and thereon alleges, that the Facility
15 Owner's and/or Operator's Annual Reports failed to meet the monitoring and reporting
16 requirements of the Storm Water Permit, in violation of Section B(14) of the 1997
17 Permit.

18 291. Coastkeeper is informed and believes, and thereon alleges, that based on the
19 above-described violations of the Storm Water Permit the Facility Owner's and/or
20 Operator's annual reports submitted pursuant to the 2015 Permit will fail to meet the
21 requirements of Section XVI(B) of the 2015 Permit.

22 292. Coastkeeper is informed and believes, and thereon alleges, that the Facility
23 Owner and/or Operator has failed to submit complete Annual Reports to the Regional
24 Board, in violation of Sections B(14), C(9), C(10) and C(11) of the 1997 Permit.

25 293. The Facility Owner and/or Operator has been in violation of Sections B(14),
26 C(9), C(10), and/or C(11) of the 1997 Permit and CWA every day since at least June 3,
27 2011.

28 294. The Facility Owner's and/or Operator's violations of the reporting

1 requirements of the Storm Water Permit and the CWA are ongoing and continuous.

2 295. By committing the acts and omissions alleged above, the Facility Owner
3 and/or Operator is subject to an assessment of civil penalties for each and every violation
4 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and
5 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

6 296. An action for injunctive relief under the CWA is authorized by Section
7 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and
8 omissions alleged above would irreparably harm Coastkeeper, its members, and the
9 citizens of the State of California, for which harm they have no plain, speedy, or adequate
10 remedy at law.

11 297. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
12 an actual controversy exists as to the rights and other legal relations of the Parties.

13 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth
14 hereafter.

15 **VI. RELIEF REQUESTED**

16 298. Plaintiff respectfully requests that this Court grant the following relief:

17 a. A Court order declaring the Defendant to have violated and to be in
18 violation of Sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and
19 (b); for discharging pollutants from the Facility in violation of a permit issued pursuant to
20 Section 402(p) of the CWA, 33 U.S.C. § 1342(p); for failing to meet effluent limitations
21 which include BAT/BCT requirements; and for failing to comply with the substantive
22 and procedural requirements of the Storm Water Permit.

23 b. A Court order enjoining Defendant from discharging pollutants not in
24 compliance with an NPDES permit;

25 c. A Court order requiring Defendant to implement affirmative injunctive
26 measures designed to eliminate Defendant's violations of the substantive and procedural
27 requirements of the Storm Water Permit and the Clean Water Act;

1 d. A Court order assessing civil monetary penalties for each violation of the
2 CWA at \$37,500 per day per violation for violations occurring since June 3, 2011, as
3 permitted by CWA Section 309(d), 33 U.S.C. § 1319(d) and Adjustment of Civil
4 Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009);

5 e. A Court order awarding Plaintiff their reasonable costs of suit, including
6 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the Clean
7 Water Act, 33 U.S.C. § 1365(d); and

8 f. Any other relief as this Court may deem appropriate.
9

10 Dated: August 3, 2016

Respectfully submitted,

11 LAWYERS FOR CLEAN WATER, INC.
12

13 

14 Caroline Koch
15 Attorney for Plaintiff
16 Orange County Coastkeeper
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A



ORANGE COUNTY
COASTKEEPER.

3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
www.coastkeeper.org

June 3, 2016

VIA CERTIFIED MAIL

Robertson's Ready Mix San Clemente
Attn: Roger Hortick
116 Rincon Ct.
San Clemente, CA 92672

Mervyn Encarnacion
Registered Agent for Service of
Process for Robertson's Ready Mix,
Ltd., a California Limited Partnership
200 S. Main Street, Suite 200
Corona, California 92882

Robertson's Ready Mix, Ltd.,
a California Limited Partnership
200 S. Main Street, Suite 200
Corona, California 92882-2212

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") regarding violations of the Clean Water Act¹ and California's Industrial Storm Water Permit² ("Storm Water Permit") occurring at the industrial facility with its main address at: 116 Rincon Ct., San Clemente, CA 92672 ("Facility"). The purpose of this letter is to put Robertson's Ready Mix San Clemente and Robertson's Ready Mix, Ltd., a California Limited Partnership, (collectively, "Robertson's"), as the owners and/or operators of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Robertson's is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.

This letter is being sent to you as the responsible owners and/or operators of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Robertson's that Coastkeeper intends to file a federal enforcement action against Robertson's for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 2,000 members who live and/or recreate in and around the San Juan Hydrological Unit. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Orange County. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act and other environmental regulations, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper use and enjoy the waters that Robertson's discharges into, including the Segunda Deshecha Creek (also known as "Segunda Deshecha Canada Channel"), which flows to the Pacific Ocean at North Beach. Members of Coastkeeper use and enjoy the Pacific Ocean where Segunda Deshecha Creek meets the ocean to swim, wade, picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of pollutants from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Robertson's failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Facility

Information available to Coastkeeper indicates that Robertson's Ready Mix, Ltd., is an owner and/or operator of the Facility. Robertson's Ready Mix, Ltd. is an active California limited partnership and its registered agent is: Mervyn Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882. Pursuant to California Corporations Code section 15904.04, Robertson's Ready Mix, Ltd.'s general partners are jointly and severally liable for the Clean Water Act violations described herein. Further, to the extent Robertson's Ready Mix, Ltd.'s limited partners own and/or operate the Facility together with Robertson's Ready Mix, Ltd.

Coastkeeper refers to Robertson's Ready Mix San Clemente and Robertson's Ready Mix, Ltd. together as the "Facility Owners and/or Operators." The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

C. The Facility's Storm Water Permit Coverage

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See Storm Water Permit, Finding ¶¶ 12, 17.*

Robertson's obtained Storm Water Permit coverage on November 20, 1997, when the State Water Board confirmed the receipt and processing of its original NOI ("1997 NOI Receipt").

On September 29, 2015, Robertson's submitted another NOI to continue the Facility's coverage under the Storm Water Permit ("2015 NOI"). The 2015 NOI identifies the Operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Robertsons Ready Mix San Cleme, 116 Rincon Ct., San Clemente, CA 92672." The 2015 NOI lists the Facility size as "3 acres", the industrial area exposed to storm water is listed as "17800 Sq.Feet", and the percentage of imperviousness is not listed.³ However, the Facility Storm Water Pollution Prevention Plan ("SWPPP")⁴ indicates that the site is approximately 85% impervious. The 1997 NOI Receipt and the 2015 NOI list the Waste Discharge Identification ("WDID") number for the Facility as 930I013199.

The 1997 NOI Receipt and 2015 NOI list the Standard Industrial Classification ("SIC") code for the Facility as 3273 ("Ready-Mixed Concrete"). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See Storm Water Permit, Attachment A, ¶ 2.* Information available to Coastkeeper, including the Facility SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4212 (local trucking without storage) also applies to the Facility.⁵

D. Storm Water Pollution and the Waters Receiving Robertson's Discharges

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as this Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

³ To the extent the Facility Owners and/or Operators have or intend to limit the Storm Water Permit coverage at the Facility based on the asserted acreage "exposed to storm water," Coastkeeper puts the Facility Owners and/or Operators on notice that they have not complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the required "no exposure" certification. Further, to the extent the Facility Owners and/or Operators failed to obtain Permit coverage for all areas of industrial activity at the Facility, storm water discharges associated with industrial activities from unpermitted portions of the Facility violate section 301(a) of the Clean Water Act.

⁴ The Facility SWPPP publicly available via the SMARTS database is labeled "April 2015" and was signed by the Facility's "legally responsible person" on September 30, 2015. Coastkeeper also obtained the April 2015 SWPPP via a Public Records Act request. Coastkeeper understands that the April 2015 SWPPP is the current SWPPP for the Facility.

⁵ Information available to Coastkeeper indicates this Facility, is 90% impervious. This information is contradictory to the Facility's SWPPP, and Coastkeeper will add additional violations based on this information as more data becomes available.

Based on EPA's Industrial Storm Water Fact Sheet for Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the Segunda Deshecha Creek pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Facility discharges into the Segunda Deshecha Creek and immediately into the Pacific Ocean at North Beach ("Receiving Waters").⁶ Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, San Diego Region ("Regional Board") issued the *Water Quality Control Plan for the San Diego Basin* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. Existing Beneficial Uses for the Segunda Deshecha Creek include Agricultural Supply, Non-Contact Water Recreation, Warm Freshwater Habitat, and Wildlife Habitat. See Basin Plan at Table 2-2. Potential Beneficial Uses include Contact Water Recreation.⁷ Id.

According to the 2012 303(d) List of Impaired Water Bodies, Segunda Deshecha Creek is impaired for phosphorus, toxicity, and turbidity.⁸ Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

⁶ The 2015 NOI identifies the water receiving discharges from the Facility as San Diego Creek. However, consistent with information available to Coastkeeper, the Facility SWPPP identifies the receiving water as Segunda Deshecha Creek. Coastkeeper puts the Facility Owners and/or Operators on notice that the 2015 NOI erroneously identified San Diego Creek as the receiving water.

⁷ A "potential beneficial use" includes a use that "will probably develop in future years through the implementation of various control measures." Basin Plan at 2-14.

⁸ 2012 Integrated Report, available at

http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on May 18, 2016).

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities

Information available to Coastkeeper indicates the Facility is located at 116 Rincon Court, San Clemente, CA 92672, which is approximately one half mile south of Avenida Pico exit on the I-5 Freeway and one half mile northeast of the Pacific Ocean.

The Facility is approximately 3.0 acres. The Facility is an active concrete batch plant. Raw materials, including aggregate (rock, sand, and gravel), cement⁹, fly ash, and admixtures are delivered to the Facility, and are mixed with water to create concrete. These materials, water, and (if applicable) admixtures are added to concrete haul trucks that mix the ingredients together to produce concrete and haul the concrete off site. The concrete production process also includes onsite vehicle and mobile equipment operation, parking, diesel fueling from an underground fuel tank, and maintenance. As part of the concrete production process, the Facility receives unused or recycled surplus concrete from its customers, stores it until it is dry, then crushes it at the Facility by a mobile crushing unit, before being hauled offsite again.

The Facility's industrial activities include, but are not limited to: concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, and cement; fueling, repairing, cleaning, and maintaining vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new vehicle fluids, and hazardous waste vehicle fluids; vehicle and equipment storage.

Based on Coastkeeper's review of the SWPPP and other publicly available documents, the Facility includes a batch plant, an unpaved storage area, two (2) commercial buildings, grizzly material off-loading area, a fuel storage area, a 3 pit reclaimer and truck washing area, one sump, outdoor aggregate storage areas, aggregate hoppers, aggregate storage bunkers, a detention basin, fly ash silos, a fueling underground storage tank, admixture storage areas, material unloading and loading areas, parking areas for passenger vehicles and mixing trucks, and an office.

Information available to Coastkeeper indicates that up to 1,728 tons of aggregate material, up to 280 tons of cement, up to 112 tons of fly ash, and up to 13,600 gallons of admixtures, may be in process or storage at the Facility at any one time. Additionally, up to 24,220 gallons of fuels, oils, and greases may be stored at the Facility at any one time.

B. Pollutants Associated with Robertson's Industrial Activities

Information available to Coastkeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances¹⁰; metals, such as iron and

⁹ Based on Coastkeeper's review of the Facility SWPPP, cement is stored in "cement storage silos" in the concrete batch plant area of the Facility, and that cement is received in this area. To the extent cement is stored outdoors, storm water discharges from the Facility may be subject to additional effluent limitations set out at 40 C.F.R. § 411.30. Coastkeeper will add additional information and/or violations relevant to the Facility Owners and/or Operators' storage and handling of cement as that information becomes available to Coastkeeper.

¹⁰ Storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a

aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic, COD; BOD; TSS¹¹; benzene; gasoline and diesel fuels; fuel additives; coolants; trash; and O&G.

Information available to Coastkeeper indicates Robertson's has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), fueling and maintenance area(s), add-mix area(s), batch plant area(s), truck washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Coastkeeper also indicates that concrete, particulates, fugitive dust of sand, gravel, and cement have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the recycled concrete storage area, near the driveways, and near the loading and unloading areas. As a result of the pollutants accumulating near the driveways, trucks and vehicles leaving the Facility via that driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Coastkeeper indicates that recycled concrete storage is located at the northwestern portion of the site. This unprocessed material is stored outside and without adequate cover or containment. Information available to Coastkeeper also indicates the presence of a raw materials storage area, near the Exit driveway onto Rincon Court, stored outside and without adequate cover or containment, which results in discharges of polluted storm water and fugitive dust emissions through the Exit. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without adequate secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all pollutant sources at the Facility.

Robertson's failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Coastkeeper indicates that Robertson's discharges process waters from equipment washing and other activities as part of its industrial operations.

C. Facility Storm Water Flows and Discharge Locations

The Facility SWPPP states the site is approximately 85% impervious and is considered three drainage areas labeled "Drainage Area 1 (DA1)," "Drainage Area 2 (DA2)," and "Drainage Area 3

solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die.

¹¹ High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

(DA3).” The Facility SWPPP indicates that DA1 encompasses the batch plant area and western side of the property, where storm water falls from DA1 to the sump, reclaimer pits, or detention basin. DA2 encompasses the southern portion of the Facility, including the driveway, and indicates storm water entering DA2 sheet flows westerly to DA1. Finally, the SWPPP states that DA3 encompasses the eastern region of the Facility, with storm water entering this zone flowing into Rincon Court and the storm drain system by way of the cul-de-sac driveway. In the SWPPP, the Facility Owners and/or Operators identify two (2) discharge points located at the Facility identified as “Outfall 1 (OF1)” and “Outfall 3 (OF3)”. The SWPPP indicates that storm water entering DA3 sheet flows into Rincon Court and the storm drain system by way of the cul-de-sac driveway, which is labeled OF3. The SWPPP indicates OF1 as discharging into Segunda Deshecha Creek and encompassing runoff from DA1 and DA2. The Facility SWPPP indicates that both OF1 and OF3 will be sampled.

However, information available to Coastkeeper indicates that an additional and/or alternative discharge point at the Facility is located behind the batch plant area in the southwest portion of the Facility. This discharge point discharges directly into Segunda Deshecha Creek and is not identified in the Facility SWPPP, but is identified as “Outfall #1” in a site map available in the SMART’s database. Accordingly, there are between one (1) and three (3) discharge points at the Facility.

The Facility Owner and/or Operators also report that a detention basin, sump, and reclaimer pit are located at the Facility. These containment areas are intended to collect storm water, to be recycled and used at the Facility, but no sizing information is provided. Based on information available to Coastkeeper, this retention/detention does not contain all storm water at the Facility and that storm water polluted by the industrial activities at the Facility discharges to the Receiving Waters.¹² In addition, this retention at the Facility allows storm water and non-storm water to mix.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the “1997 Permit.” On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the “2015 Permit.” The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Robertson’s is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act’s legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group*

¹² To the extent Robertson’s intends to retain storm water associated with industrial activities on the Facility in an effort to terminate its current Permit coverage, Coastkeeper puts Robertson’s on notice that it has not met the requirements of Section XX.C. of the Storm Water Permit, and that any discharges from the Facility not in compliance with the Storm Water Permit are violations of Sections 301(a) and 402(p) of the Clean Water Act.

of *N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) (“Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect”).

A. Unauthorized Non-Storm Water Discharges from the Robertson’s Facility in Violation of Storm Water Permit Discharge Prohibitions

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper, including information from Coastkeeper’s field investigations, indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur during concrete truck filling and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without the BMPs necessary to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are prohibited.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Discharge Prohibitions are violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable (“BAT”) for toxic¹³ and non-conventional pollutants and Best Conventional Pollutant Control Technology (“BCT”) for

¹³ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

conventional pollutants.¹⁴ The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Coastkeeper, including its review of publicly available information and observations, BMPs that achieve BAT/BCT have not been implemented at the Facility. Consistent with Coastkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.¹⁵ The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by Coastkeeper as well as Robertson's. For example, a storm water sample collected by Robertson's on January 5, 2016, contained 9.08 mg/L of iron, 9.08 times higher than the EPA Benchmark iron, and 371 mg/L of TSS, 3.71 times the EPA Benchmark for TSS. Additionally, samples collected by Coastkeeper on March 7, 2016, contained 1.5 mg/L of aluminum (2 times the EPA Benchmark for Aluminum), 2 mg/L of iron (2 times the EPA Benchmark iron), and 300 mg/L of COD (2.5 times the EPA Benchmark for COD). The significant exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge near the Facility).¹⁶ These discharge violations are ongoing and will continue every time Robertson's discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time Robertson's discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. The NALs do not represent technology based criteria relevant to determining

¹⁴ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

¹⁵ *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

¹⁶ Dates of significant rain events are measured at the Oceanside Mcolf Camp Pendleton Rain Station KNXF. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

whether an industrial facility has implemented BMPs that achieve BAT/BCT.¹⁷ And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").¹⁸ The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of applicable WQS. Specifically, the Basin Plan sets out WQS for Inland Surface Waters applicable to the Facility discharges, including the following narrative water quality objective ("WQO") for iron: "Inland surface waters shall not contain iron in concentrations in excess of the numerical objective described in Table 3-2. *See* Basin Plan, 3-25. The numeric objective for iron is 0.3 mg/L. *See* Basin Plan, Table 3-2. This WQO is not to be exceeded more than 10% of the time during any on year period. *Id.* A storm water sample collected by Robertson's on January 5, 2016, contained 9.08 mg/L of iron, 30.2 times higher than the WQO for iron. Additionally, a sample collected by Coastkeeper on March 7, 2016, contained 2 mg/L of iron, 6.6 times the WQO for iron. These exceedances of WQS demonstrate that Robertson's has violated and continues to violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

¹⁷ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

¹⁸ The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

As explained herein, Receiving Waters are impaired for some of the same pollutants that are routinely discharged from facilities of this type, and are thus unable to support the designated beneficial uses. The 2012 303(d) List of Impaired Water Bodies lists the Segunda Deshecha Creek as impaired for multiple pollutants, including phosphorus, toxicity, and turbidity.¹⁹ Information available to Coastkeeper indicates that facilities of this type often discharge storm water which contains elevated concentrations of pollutants, such as aluminum, iron, copper, lead, and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from this type of facility also adversely impact human health. Coastkeeper will provide additional information regarding this issue as it becomes available. These types of harmful discharges are violations of the Storm Water Permit Receiving Water Limitations. See 1997 Permit, Receiving Water Limitation C(1) and C(2); 2015 Permit, Receiving Water Limitation VI.A and VI.B.

Coastkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. See, e.g., Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a water quality standard.²⁰ And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

¹⁹ 2012 Integrated Report, available at

http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on May 18, 2016).

²⁰ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 SWPPP Requirements

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

2. 2015 SWPPP Requirements

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, there is no site map attached to the SWPPP. To the extent the site map uploaded to SMARTS could be the SWPPP site map, it fails to identify all areas of industrial activity, areas impacted by discharges from surrounding areas, areas of soil erosion, locations and descriptions of structural control measures that affect run-on, and all discharge locations.

Further, the narrative portions of the SWPPP fail to include all sources of unauthorized non-storm water discharges in violation of Section A(6) of the 1997 Permit and Section X(G)(1)(e) of the 2015 Permit. The SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit. And fails to identify run-on from areas surrounding the Facility in violation of Section A(7)(a)(ii) of the 1997 Permit and Section X(G)(1)(f) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous

violation of the Storm Water Permit's SWPPP requirements since at least June 3, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit Requirements

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section

B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *Id.*; see also 1997 Permit, Table D, Sector E.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when “industrial activities and BMPs within two or more drainage areas are substantially identical.” If a discharger seeks to reduce sampling locations, the “[f]acility operators must document such a determination in the annual report.” *Id.*

2. 2015 Permit Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility’s discharge, and to ensure compliance with the 2015 Permit’s Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. See 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. See *id.*

As an *increase* in observation frequency than the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event²¹ as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year²² (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

²¹ The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

²² A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

Dischargers participating in a Compliance Group, i.e., group monitoring plan, are required to sample two QSEs each year. *See* 2015 Permit, Section II(M).

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to conduct all required quarterly and/or monthly visual observations of unauthorized discharges. *See* 1997 Permit, Section B(3); *see also* 2015 Permit, Section XI(A)(1). Additionally, the Facility Owners and/or Operators have failed to provide the records required by the Storm Water Permit for the monthly visual observations of storm water discharges in violation of Section B(4) of the 1997 Permit and Section XI(A)(3) of the 2015 Permit. Nor have the Facility Owners and/or Operators developed an M&RP that requires analysis for pollutants listed on the 2012 303(d) list that are associated with the industrial activities at the Facility, including toxicity, in violation of Section XI(B)(6) of the 2015 Permit. In addition, the Facility Owners and/or Operators failed and continue to fail to develop an M&RP that requires that the applicable test methods be used when analyzing storm water samples from the Facility.

The Facility Owners and/or Operators also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, for the past five (5) years the Facility Owners and/or Operators have not collected any storm water samples in violation of Sections B(5), B(7), and B(15) of the 1997 Permit and Section XI of the 2015 Permit. Specifically, pursuant to the applicable group monitoring plan, the Facility Owners and/or Operators were required to collect samples during the 2009/2010, 2011/2012, and 2013/2014 wet seasons and the 2015/2016 reporting year. The Facility Owners and/or Operators failed collect any storm water samples prior to January 5, 2016.

Information available to Coastkeeper also indicates that the Facility Owners and/or Operators have failed and continue to fail to collect samples from all discharge points at the Facility. For example, the Facility Owners and/or Operators have failed to collect storm water samples from the discharge point located behind the batch plant area described above. The Facility Owners and/or Operators have failed to and continue to fail to collect required storm water samples when qualifying rain events occurred.

In fact, Robertson's collected its first storm water sample for the Facility on January 5, 2016. However, the Facility Owners and/or Operators failed to analyze the January 5 sample for all required contaminants, including copper, lead, pH, and aluminum, in violation of Section XI(B)(6) of the 2015 Permit. *See* Exhibit 1. And, based on Coastkeeper's review of publicly available information including the SMARTs database, the Facility Owners and/or Operators have failed to sample any subsequent storm water discharges from the Facility though storm events likely to generate storm water runoff have occurred since January 5, 2016 (*see, e.g.,* Exhibit 2), in violation of Sections XI(B)(1-5) of the 2015 Permit. For example, Coastkeeper collected a storm water sample from the Facility on March 7, 2016, when a rain event of 0.25 inches occurred, but the Facility Owners and/or Operators did not.

Further, at Sections 10.4.7 and 10.4.8 the Facility SWPPP state that the Facility Owners and/or Operators will both combine storm water samples and reduce the number of locations to be sampled in each drainage area if the industrial activities and BMPs in the area are similar. The Facility Owners and/or Operators failed and continue to fail to meet the requirements of Sections XI(C)(4) and XI(C)(5) related to representative sampling reduction and qualified combined samples. And these sections of the SWPPP are inconsistent with Section 4.1 that states that both OF1 and OF3 will be sampled, as well as the site map available on the SMART's database that indicates that there is only one (1) discharge point located at the Facility.

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 3, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

F. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. See 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2010/2011 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above EPA Benchmarks, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For instance, in the 2010/2011 and 2011/2012 Annual Reports the Facility Owners and/or Operators have failed to include required explanations for its failures to conduct certain required sampling

and/or observations. In the 2012/2013 and 2013/2014 Annual Reports, as the reason no samples were collected the Facility Owners and/or Operators state that the Facility "is a construction based business and during inclement weather our facility is closed." Not only does information available to Coastkeeper demonstrate that the Facility does operate during storm events, the 1997 Storm Water Permit and the 2015 Storm Water Permit do not excuse failures to collect required samples on this basis.

In addition, the Facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Owners and/or Operators have not reported non-compliance as required.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 3, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Coastkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations after June 3, 2011.

In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act and Section 304(b) of the Clean Air Act for Robertson's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Coastkeeper's legal counsel:

Caroline Koch
Lawyers for Clean Water, Inc.
1004A O'Reilly Avenue
San Francisco, California 94129

Orange County Coastkeeper
ATTN: Colin A. Kelly
3151 Airway Ave., Suite F-110
Costa Mesa, CA 92626
Tel: (714) 850-1965 ext. 307

Sincerely,



Colin Kelly
Senior Staff Attorney
Orange County Coastkeeper

SERVICE LIST

VIA U.S. MAIL

Loretta Lynch, Attorney General
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, California 92801-2700

Gina McCarthy
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Exhibit 1

Exhibit 1

San Clemente Sample Chart

Sample collected by Waterkeeper (W) or Discharger (D)	Date of sample collection	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	CTR / WQO	Magnitude of CTR/WQO Exceedance
2010-2011 WET SEASON								
<i>no samples collected</i>								
2011-2012 WET SEASON								
<i>no samples collected</i>								
2012-2013 WET SEASON								
<i>no samples collected</i>								
2013-2014 WET SEASON								
<i>no samples collected</i>								
2014-2015 WET SEASON								
<i>no samples collected</i>								
2015-2016 REPORTING YEAR								
D	1/5/2016	Fe	9.08	mg/L	1	9.08	.3	30.26
D	1/5/2016	TSS	371	mg/L	100	3.71	N/A	N/A
W	3/7/2016	Fe	2	mg/L	1	2	.3	6.6
W	3/7/2016	COD	300	mg/L	120	2.5	N/A	N/A
W	3/7/2016	Al	1.5	mg/L	0.75	2.0	N/A	N/A
Total Exceedances						5		2

Exhibit 2

Robertson's San Clemente
Exhibit 2

Oceanside Mcolf Camp Pendleton Rain Station KNXF		
Date	Day of Week	Daily Precipitation (Inches)
10/5/2011	Wednesday	.46
11/4/2011	Friday	.29
11/6/2011	Sunday	.76
11/12/2011	Saturday	.87
11/20/2011	Sunday	.78
12/12/2011	Monday	.21
2/13/2012	Monday	.12
2/14/2012	Tuesday	.40
2/15/2012	Wednesday	.33
2/16/2012	Thursday	.21
3/17/2012	Saturday	.35
3/18/2012	Sunday	.14
3/25/2012	Sunday	.38
4/11/2012	Wednesday	.21
4/13/2012	Friday	.58
4/25/2012	Wednesday	.18
4/26/2012	Thursday	.70
10/11/2012	Thursday	.86
11/30/2012	Friday	.24
12/13/2012	Thursday	.48
12/18/2012	Tuesday	.12
12/24/2012	Monday	.31
12/26/2012	Wednesday	.13
12/29/2012	Saturday	.21
1/6/2013	Saturday	.22
1/25/2013	Friday	.64
2/19/2013	Tuesday	.28
3/7/2013	Thursday	.16
3/8/2013	Friday	.67
5/5/2013	Sunday	.10
5/6/2013	Monday	.44
8/21/2013	Wednesday	.15
10/9/2013	Wednesday	.34
10/28/2013	Monday	.34
11/21/2013	Thursday	.27

Robertson's San Clemente
Exhibit 2

2/28/2014	Friday	.71
3/1/2014	Saturday	.27
7/27/2014	Sunday	.19
8/20/2014	Wednesday	.24
11/1/2014	Saturday	.24
11/21/2014	Friday	.14
12/2/2014	Tuesday	.39
12/3/2014	Wednesday	.53
12/12/2014	Friday	.71
12/20/2014	Tuesday	.48
2/22/2014	Sunday	.11
5/8/2015	Friday	.42
5/14/2015	Thursday	.26
7/18/2015	Saturday	.37
9/15/2015	Tuesday	1.14
10/4/2015	Sunday	.18
12/11/2015	Friday	.13
12/13/2015	Sunday	.13
1/5/2016	Tuesday	.26
3/6/2016	Sunday	.20
3/7/2016	Monday	.25
3/11/2016	Friday	.21
4/10/2016	Sunday	.15
	Total Rain Days	58